STANDARD CHARTERED BANK

v.

STANDARD CHARTERED BANK OFFICERS' ASSOCIATION & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
TUAN LOW HOP BING J
[APPLICATION MOTION NO. R1-25-3 OF 1994]
8 AUGUST 1995

INDUSTRIAL LAW: *Certiorari to quash Award of Industrial Court - Issue of whether an officer of applicant bank entitled to overtime meal allowance in accordance with rates determined by the Malaysian Commercial Banks Association (MCBA) and the Association of Bank Officers Peninsular Malaysia (ABOM) - Industrial Court answering in the affirmative - Whether Industrial Court erred in law and exceeded its jurisdiction.*

STATUTORY INTERPRETATION: *"overtime" - Section 60A(3)(b) Employment Act 1955 - Whether "to work outside the normal hours of work" synonymous with "overtime".*

This was an application by the applicant for an order of *certiorari* to quash an award of the Industrial Court handed down on 27 November 1993. The 1st respondent had sought an interpretation of Articles 20(1) and 36(1) of the Collective Agreement, Cog. No. 366/91 regarding meal allowance and payment of arrears of allowance. The question was whether an officer of the applicant bank who is required to work outside the normal hours of work is entitled to be paid a meal allowance in accordance with the rates as determined by MCBA and ABOM. The Industrial Court had answered in the affirmative.

The applicant contended that the applicant and the Standard Chartered Bank Officers Association (SCOBA) had not negotiated on "overtime meal allowance" and that the Industrial Court had erred in law and exceeded its jurisdiction by answering the question in the affirmative.

Held:

[1] Upon a perusal of Article 20(1), it is clear that meal allowance is an entitlement given to an officer who is required "to work outside normal hours of work". These operative words are significant in that they are indeed the paraphrase of the word "overtime". Therefore it is apparent that the Industrial Court has not erred in law.

[2] The Court agrees with the interpretation by the Industrial Court that "meal allowance" for an officer who is required "to work outside the normal hours of work" and "overtime meal allowance" are synonymous. The Industrial Court therefore acted within the scope of s. 33 of the Industrial Relations Act 1967.

[3] As there is no error of law, the remedy of *certiorari* will not issue and there is no ground for this Court to interfere.

[Application dismissed with costs].

Cases referred to:
Enesty Sdn. Bhd. v. Transport Workers Union & Anor. [1986] 1 MLJ 24 ***(refd)***
Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers' Union, CLJ JT No. 17 of 1995 ***(refd)***

Legislation referred to:
Employment Act 1955, s. 60A(3), (b)
Industrial Relations Act 1967, s. 33

For the applicant - M/s. R.R. Singam & Lim
For the 1st respondent - M/s. Lobo & Associates

JUDGMENT

Low Hop Bing J:

Background Facts

This matter arises out of Industrial Court Award No. 387 of 1993 ("the said Award) which was handed down on 27 November 1993.

The applicants have filed this originating motion for an order of *certiorari* to quash the said Award.

The issue before me is "whether an officer of the Standard Chartered Bank who is required to work outside the normal hours of work are entitled to be paid a meal allowance in accordance with the rates as determined by the Malaysian Commercial Banks Association (MCBA) and the Association of Bank Officers Pensinsular Malayasia (ABOM).

It is the contention of the applicant that the Industrial Court erred in law and exceeded its jurisdiction when it answered the above question in the affirmative in the said Award.

In the Industrial Court, the first respondent sought an interpretation of Art. 20(1) (meal allowance to be paid in accordance with the rates as determined by MCBA/ABOM Industrial Court Award) of the collective agreement, Cog No. 366/91 and Art. 36(1) of the same collective agreement (Implementation - arrears under Articles 17 and 20 - are payable for 1 August 1991 to date of payment). The first respondent submitted that Articles 20(1) and 36(1) of the 1991 agreement should be interpreted as follows:

> On an interpretation of Articles 20 and 36(1) of the collective agreement read with Award No. 254 of 1992, officers within the scope of the collective agreement are entitled to arrears of overtime meal allowance with effect from 1 August 1991 (Art. 36(1) till the date of payment of the same).

The relevant portion of Art. 20(1) reads as follows:

> (1) Work Outside Normal Hours
>
> An officer who is required to work outside the normal hours of work shall be paid a meal allowance in accordance with the rates as determined by the MCBA/ABOM Industrial Court Award.

It was contended for the applicant that the Standard Chartered Bank (SCB) and Standard Chartered Bank Officers Assoication (SCBOA) have not negotiated on "overtime meal-allowance".

Upon a proper perusal of Art. 20(1) above, it is eminently clear to me, as it is to the Industrial Court when it handed down the said Award, that meal allowance is an entitlement given to an officer who is required "to work outside normal hours of work". These operative words

in my considered opinion are significant in that they are indeed the paraphrase of the word "overtime". It is therefore apparent to me that the Industrial Court has not erred in law, neither has it acted in excess of jurisdiction, when it held as follows:

> Article 20(1) of the 1991 agreement is clear and unambiguous. It provides for the payment of meal allowance to officers who are required to work outside the normal hours of work. Work performed outside the normal hours of work is, in fact, overtime work. And we are fortified in our view by s. 60A(3)(b) of the Employment Act 1955. Whatever one wants to call it, meal allowance paid to officers who are required to work outside their normal hours of work is overtime meal allowance. And we so hold accordingly.

The word "overtime" is defined in s. 60A(3)(b) of the Employment Act 1955 and it means the number of hours of work carried out in excess of the normal hours of work per day. This is what has been expressly stated in Art. 20(1) although the word "overtime" is not used therein.

I agree with the interpretation by the Industrial Court that "meal allowance" for an officer who is required "to work outside the normal hours of work" and "overtime meal allowance" are synonymous. It is to my mind a correct interpretation, without an error of law. It is therefore within its jurisdiction and cannot be in excess of jurisdiction. The categories "meal allowance" with the accompanying words and "overtime meal allowance" are interchangeable and have the same effect and connotation. The Industrial Court, therefore, acted within the scope of s. 33 of the Industrial Relations Act 1967.

If there is no error of law, the remedy of *certiorari* will not issue. An Award of the Industrial Court which is founded upon an error of law (whether such error is one based on interpretation or otherwise would render it invalid and hence a nullity: *Enesty Sdn. Bhd. v. Transport Workers Union & Anor* [1986] 1 MLJ 24; *Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers' Union*, CLJ JT No. 17 of 1995 dated 8 May 1995.

Where on the other hand, as in the instant case, the Industrial Court has not exceeded its jurisdiction nor made an error of law in handing down the said Award, the said Award cannot be quashed. By reason of the foregoing, there is no ground for me to interfere. The application is therefore dismissed with costs.